
OPINION OF THE PUBLIC ACCESS COUNSELOR

WILLIAM PESLAK
Complainant,

v.

LAFAYETTE POLICE DEPARTMENT,
Respondent.

Formal Complaint No.
21-FC-128

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Lafayette Police Department violated the Access to Public Records Act.¹ City Attorney Jacque Chosnek filed an answer on behalf of the department. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on August 31, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over the Lafayette Police Department's (LPD) application of the investigatory records exception under the Access to Public Records Act (APRA).

On August 10, 2021, William Peslak (Complainant) filed a public records request with LPD seeking the following:

[V]ideo recordings, related reports, and CAD records for a Motor Vehicle Accident on 01/29/2021 @ 10:28 pm, location of Sagamore Pkwy & Union Street. The crash report number is #2021001162.

On August 12, 2021, LPD responded to Peslak's request. The agency provided him with a copy of the CAD report but denied access to the case report and video recordings because the case was pending in court. LPD noted that it was unable to release the report of video without a subpoena.

On August 31, 2021, Peslak filed a formal complaint with this office arguing LPD's denial is a violation of APRA. Peslak asserts that the underlying case involves a motor vehicle accident and any evidence released is factual and would not affect the outcome of the case. He also notes there is no active investigation.

On September 17, 2021, the LPD submitted a response denying Peslak's allegations of wrongdoing. LPD argues it withheld the case report and video in accordance with Indiana Code section 5-14-3-4(b)(1), and Indiana Code section 5-14-3-5.2. LPD also claims that Peslak's characterization of the requested records is inaccurate because the case in-

volves the investigation of multiple felonies and misdemeanors against the driver of the other vehicle Cornelius Harrell. LPD contends the criminal investigation is ongoing and jury trial is scheduled.

LPD maintains the law grants them the discretion to withhold the requested records; and thus, the department has not violated APRA. At the same time, LPD committed to releasing the records to Peslak upon the resolution of the criminal proceeding.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (APRA) states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. The Lafayette Police Department is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy LPD’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

This case primarily involves the application of APRA’s discretionary exception for the investigatory records of law enforcement agencies.

2. Investigatory records of law enforcement

APRA gives a law enforcement agency the discretion to withhold the agency's investigatory records from public disclosure. *See* Ind. Code § 5-14-3-4(b)(1). Indeed, LPD is a law enforcement agency for purposes of APRA. *See* Ind. Code § 5-14-3-2(q)(6). That means LPD has discretion to withhold its investigatory records from public disclosure.

Under APRA, “investigatory record,” means “information compiled in the course of the investigation of a crime.” Ind. Code § 5-14-3-2(i). In other words, “if there is no criminal investigation, the documents cannot be withheld at [the agency's] discretion pursuant to the investigatory records 6 exception.” *Scales v. Warrick County Sheriff's Department*, 122 N.E.3d 866, 871 (Ind. Ct. App. 2019).

Although APRA does not define “crime,” our criminal code defines “crime” to mean “a felony or a misdemeanor.” Ind. Code § 35-31.5-2-75.

Here, Peslak contends LPD improperly withheld disclosable public records related to a motor vehicle accident. LPD argues the exception applies to the case report Peslak requested because it involves the investigation of multiple felonies and misdemeanors against the driver of the other vehicle.

Based on the information provided, LPD had discretion to withhold the requested records in accordance with the investigatory records exception.

Granted, if this case involved only a personal injury accident without any underlying or related criminal investigation,

APRA's investigatory records exception would not apply to shield the requested records from disclosure.

As it relates to the denial, LPD must remain mindful going forward that APRA requires an agency to include a statement of the specific exemption or exception authorizing nondisclosure of all or part of the public record and the name and the title or position of the person responsible for the denial. Ind. Code § 5-14-3-9(d)(2).

LPD's original denial did not include a statement of the relevant disclosure exception. Instead, the denial informed Peslak that he needed a subpoena to access certain records he requested because there was a pending court case. That is not enough because APRA contains no general disclosure exception for otherwise disclosable records that are related to a pending court case.

As a result, it is the recommendation of this office to include the specific exception to disclosure the department is relying on when it denies a request for records.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Lafayette Police Department did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the name of the signatory.

Luke H. Britt
Public Access Counselor